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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH ANTHONY MEZA,

Defendant and Appellant.

G054357 (Consol. with G054359)

(Super. Ct. Nos. 14WF2570 &
13NF2918)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Robert R. Fitzgerald, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed and remanded to the trial court with directions.

Stephanie M. Adraktas, under appointment by the Court of Appeal, for
Defendant and Appellant.

Xavier Becerra, Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel and Mary Katherine Strickland, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

INTRODUCTION

Defendant Joseph Anthony Meza pleaded guilty to committing offenses charged in two Orange County Superior Court cases. Meza was awarded a total of 1,826 days of credit under Penal Code section 4019¹ in each case. Meza filed a request that the trial court recall his plea and sentence in both cases on the ground there had been a mistake—Meza, his counsel, and the prosecutor had agreed he would plead guilty to a total of one strike offense, an offense charged in Orange County Superior Court case No. 14WF2570 (case No. 14WF2570). The court record, however, including the subsequently issued abstract of judgment, mistakenly reflected Meza as having pleaded guilty to an additional strike offense in Orange County Superior Court case No. 13NF2918 (case No. 13NF2918).

After a hearing, the trial court changed the court’s minutes nunc pro tunc to reflect that in case No. 13NF2918, Meza had not pleaded guilty to a strike offense but instead had pleaded guilty to a non-strike offense. Meza’s sole contention on appeal is that the second amended abstract of judgment issued after that hearing erroneously reflected he had been awarded only 1,096 days of credit in case No. 13NF2918 instead of 1,826 days of credit awarded at the original sentencing hearing.

We affirm Meza’s judgment of conviction, but remand to the trial court with directions to recalculate Meza’s credit award in case No. 13NF2918. Our record does not contain a transcript of the second sentencing hearing and otherwise provides insufficient information to determine whether the reduction in credits awarded to Meza in

¹ All further statutory references are to the Penal Code unless otherwise specified.

case No. 13NF2918 was the product of clerical error or the court's deliberate calculation and, if the latter, whether any such calculation was in error.

BACKGROUND

In August 2013, Meza was charged in an amended felony complaint filed in case No. 13NF2918 with: (1) vehicle taking with a prior conviction in violation of section 666.5, subdivision (a) and Vehicle Code section 10851, subdivision (a) (count 1); (2) receiving stolen property in violation of section 496d, subdivision (a) (count 2); (3) evading a peace officer while driving recklessly and causing serious bodily injury or death in violation of Vehicle Code section 2800.3 (count 3); and (4) hit and run with permanent injury or death in violation of Vehicle Code section 20001, subdivisions (a) and (b)(2) (count 4). As to count 1, the felony complaint alleged, pursuant to section 12022.7, subdivision (a) and within the meaning of sections 1192.7 and 667.5, that Meza personally inflicted great bodily injury. The felony complaint also alleged Meza had suffered two prior serious and violent felony convictions pursuant to section 667, subdivisions (d) and (e)(1) and section 1170.12, subdivisions (b) and (c)(1), and had served two prior prison terms within the meaning of section 667.5, subdivision (b).

In August 2014, Meza was charged in an information filed in case No. 14WF2570 with (1) vehicle taking with a prior conviction in violation of section 666.5, subdivision (a) and Vehicle Code section 10851, subdivision (a) (count 1); (2) receiving stolen property in violation of section 496, subdivision (a) (count 2); (3) vehicle taking with a prior conviction in violation of section 666.5, subdivision (a) and Vehicle Code section 10851, subdivision (a) (count 3); and (4) receiving stolen property in violation of section 496, subdivision (a) (count 4). The information contained sentencing enhancement allegations that Meza committed counts 1, 2, 3, and 4 for the benefit of a criminal street gang within the meaning of section 186.22, subdivision (b)(1). The information also contained two serious prior conviction enhancement allegations.

At a hearing on October 13, 2016, Meza pleaded guilty in case No. 13NF2918 to counts 1, 3, and 4, stating the following factual basis for his plea: “In Orange County, California, on 8/23/13 I willfully and unlawfully drove and did take a 2007 Ford Silverado, not my own, without the consent of the owner, and with the intent to temporarily and permanently deprive the owner of title to and possession of the vehicle, and I previously was convicted of a felony violation of Vehicle [C]ode section 10851[, subdivision] (a). [¶] Also, while operating the vehicle I willfully and unlawfully drove with the intent to flee a pursuing peace officer’s motor vehicle while the peace officer’s vehicle was distinctively marked, exhibited a lighted red lamp visible from the front, and which was sounding a siren. Also, the peace officer wore a distinctive uniform, and I proximately caused serious bodily injury to Jose R. [¶] Also I was the driver of a vehicle involved in an accident resulting in permanent serious injury to Jose R. and I did knowingly, willfully, and unlawfully fail to immediately stop and give my identifying information to the victim and police officers at the scene of the accident.”²

At the same hearing, Meza also entered a plea in case No. 14WF2570 in which he pleaded guilty to counts 1 and 3, admitted one of the sentencing enhancements (under section 186.22, subdivision (b)(1)) alleged as to count 1, and offered the following basis for his plea: “In Orange County, California, on 3/18/13 I willfully and unlawfully drove and did take a 2012 Nissan [P]athfinder, not my own, without the consent of the owner, and with the intent to temporarily and permanently deprive the owner of title and possession of the vehicle, and I previously was convicted of a felony violation of Vehicle Code section 10851[, subdivision] (a). I committed the above offense for the benefit of, at the direction of, and in association with CROW VILLAGE, a criminal street gang, with the specific intent to promote, further, and assist in criminal conduct by members of

² The section 12022.7, subdivision (a) sentencing enhancement allegation, one of the prior prison term sentencing enhancement allegations, and one of the prior serious and violent felony enhancement allegations were dismissed.

that gang. [¶] Furthermore, on 3/12/13 I willfully and unlawfully drove & did take a Lincoln Navigator, not my own, without the consent of the owner, and with the intent to temporarily and permanently deprive the owner of title and possession of the vehicle and was previously convicted of a felony violation of Vehicle Code section 10851[, subdivision] (a).”³

In each of case Nos. 13NF2918 and 14WF2570, the trial court accepted Meza’s plea, imposed a total prison sentence of five years, and awarded Meza a total of 1,826 days of credit, comprised of 913 days of actual credit and 913 days of conduct credit. The five-year terms imposed in the two cases were ordered to run concurrently. The abstract of judgment that was filed the day after the hearing accurately reflected Meza’s sentences and credit awards in case Nos. 13NF2918 and 14WF2570.

On November 14, 2016, Meza filed a request that the trial court recall his plea and sentence in both cases, pursuant to section 1170, subdivision (d). Meza explained that he and his attorney, along with the prosecutor, had understood Meza’s negotiated plea to include pleading guilty to a total of one strike offense—vehicle theft with a gang enhancement charged as count 1 in case No. 14WF2570. The prosecutor had requested dismissal of the sentencing enhancement allegation as to count 3 in case No. 13NF2918, and by dismissal of that allegation, Meza, his counsel, and the prosecutor were under the mistaken understanding that count 3, to which Meza pleaded guilty, was no longer a strike, which resulted in the court having accepted Meza’s plea to a second strike offense.

On November 30, 2016, the trial court conducted a hearing on Meza’s request to recall his plea and sentence. The parties waived the presence of a court reporter. The trial court’s minutes from that hearing show the court corrected its prior minutes nunc pro tunc in case No. 13NF2918 to reflect that Meza pleaded guilty in

³ Counts 2 and 4 and the other enhancement allegations were dismissed.

count 3 to the non-strike offense of reckless evading a peace officer in violation of Vehicle Code section 2800.2 instead of the strike offense of evading a peace officer and causing serious bodily injury or death in violation of Vehicle Code section 2800.3.

On December 5, 2016, Meza filed a notice of appeal in each case. In case No. 13NF2918, Meza requested a certificate of probable cause on the grounds: “I was given 2 strikes, I was under the impression that I would be signing for 1 strike. It was illegal. It was not r[u]n concurrent with my Federal sentence. The D.A. & my attorney made a mistake.” In case No. 14WF2570, Meza requested a certificate of probable cause on the grounds: “When I pled guilty I was told I was signing for 1 strike, however I was actually signing 2 strikes. My attorney Kelly Rozek told me she messed up on the paperwork. I need to appeal [b]oth cases 13NF2918 and 14WF2570, also these case[]s need to specify that they would be r[u]n [con]current to my Federal case.” On December 8, 2016, the trial court certified there was probable cause for appeal from Meza’s judgment of conviction of his guilty plea in each case.

This court consolidated Meza’s two appeals for purposes of briefing, any oral argument, and decision. Meza filed in this court two requests to augment the record, both of which have been granted. The augmented record shows that on June 29, 2017, the trial court again amended its minutes from the October 13, 2016 sentencing hearing, nunc pro tunc, to reflect that Meza was sentenced to a total prison term of three years instead of five years, and that he had been awarded a reduced total of 1,096 days of credit in case No. 13NF2918. The augmented record contains an amended plea form and an amended abstract of judgment filed on June 29, 2017, which reflected the changes to Meza’s plea, conviction, and prison term in case No. 13NF2918, but not the change to the credit award. The augmented record also contains a second amended abstract of judgment, filed on November 29, 2017, which reflected the reduction of credits awarded to Meza in case No. 13NF2918 from a total of 1,826 days of credit to 1,096 days of credit as set forth in the minutes corrected by the trial court on June 29, 2017.

On December 12, 2017, Meza sent a letter to the trial court, pursuant to section 1237.1, asking the court to correct the second amended abstract of judgment in case No. 13NF2918 to reflect 1,826 days of credit.

DISCUSSION

Meza contends the second amended abstract of judgment's statement that he had been awarded a total of 1,096 days of credit constituted a clerical error that should be corrected to state he was entitled to 1,826 days of credit in case No. 13NF2918. He argues that "when there is a discrepancy between the oral pronouncement of judgment and the abstract of judgment, the oral rendition generally governs." Here, Meza contends the court's oral pronouncement of judgment included an award of 1,826 days of credit.

At the original sentencing hearing on October 13, 2016, the trial court accepted Meza's plea in case No. 13NF2918, which included a guilty plea to a strike offense, imposed a five-year prison sentence, and awarded him 1,826 days of credit. After the sentencing hearing, at Meza's request, the court modified Meza's plea to provide that he would plead to a non-strike offense instead of the strike offense. The court also resentenced Meza in case No. 13NF2918 to a total prison term of three years instead of five years and modified its minutes to reflect a total credit award of 1,096 days. The court's modifications are recorded in the court's modified minutes and in the amended abstracts of judgment; no transcript of the second sentencing hearing is included in our record. Given the significant changes to Meza's plea and sentence since the original sentencing hearing, the oral pronouncement of judgment at the original sentencing hearing no longer controls in the way it would have absent such changes.

Our record does not show why the trial court amended its minutes from the original sentencing hearing, *nunc pro tunc*, to reflect a reduction in the total credits awarded Meza in case No. 13NF2918. It is unclear whether that change reflects a clerical error or a deliberate recalculation of credits by the court. The record does not contain the

information necessary to determine how many credits Meza had earned were we to make such a calculation in the first instance. Consequently, we must remand the matter to the trial court to review the credit calculation in case No. 13NF2918.

We reject the Attorney General's argument Meza is barred from challenging his credit award in this appeal because Meza failed to file a motion to correct his sentence in the trial court under section 1237.1. In the appellate respondent's brief, the Attorney General argues the December 12, 2017 letter that Meza's appellate counsel sent to the trial court asking the court to correct the amount of credits awarded to Meza in case No. 13NF2918 was insufficient to constitute a formal motion required under section 1237.1.

Section 1237.1, as amended effective January 1, 2016 (and thus before Meza's appellate counsel's letter) provides: "No appeal shall be taken by the defendant from a judgment of conviction on the ground of an error in the calculation of presentence custody credits, unless the defendant first presents the claim in the trial court at the time of sentencing, or if the error is not discovered until after sentencing, the defendant first makes a motion for correction of the record in the trial court, *which may be made informally in writing*. The trial court retains jurisdiction after a notice of appeal has been filed to correct any error in the calculation of presentence custody credits upon the defendant's request for correction." (Italics added.)

Meza's appellate counsel's December 12, 2017 letter to the trial court requesting the court to correct the record, including the second amended abstract of judgment, to reflect a total award of 1,826 days of credit in case No. 13NF2918 was sufficient to satisfy section 1237.1.

DISPOSITION

The judgment is affirmed. We remand to the trial court with directions to recalculate Meza's credit entitlement in case No. 13NF2918.

FYBEL, J.

WE CONCUR:

MOORE, ACTING P. J.

GOETHALS, J.